

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

CLARENCE LODELL PIERCE,

Plaintiff,

v.

DIRECTOR, TDCJ-CID,

Defendant.

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CIVIL ACTION NO. 5:20-CV-00054-RWS

ORDER

Petitioner Clarence Lodell Pierce, an inmate confined in the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, at Texarkana, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends dismissal of the petition for writ of habeas corpus without prejudice. *See* Docket No. 2.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. *See* Docket No. 6. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* Fed. R. Civ. P. 72(b). After careful consideration, the Court concludes petitioner's objections should be overruled.

The Magistrate Judge recommended dismissing the petition without prejudice based on petitioner's failure to obtain authorization from the Fifth Circuit to file a successive petition. Because petitioner has filed a previous petition for writ of habeas corpus, prior authorization to file

a second or successive petition is required in accordance with 28 U.S.C. § 2244(b)(3)(A).

In his objections, petitioner continues to argue the merits of the claims asserted in his petition. However, petitioner fails to address the successiveness of his petition and his failure to obtain prior authorization to file the petition. Further, as explained in the Report, petitioner's argument for a reduction or commutation of his sentence is without merit. As petitioner has failed to allege or demonstrate he obtained prior permission to file his petition from the Court of Appeals for the Fifth Circuit, the petition should be dismissed without prejudice.

Furthermore, petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by the movant are not novel and have been consistently resolved adversely to his position. In addition, the questions

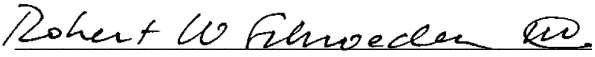
presented are not worthy of encouragement to proceed further. Therefore, petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability shall not be issued.

CONCLUSION

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. It is therefore

ORDERED that the above-titled matter is **DISMISSED WITHOUT PREJUDICE**.

So ORDERED and SIGNED this 19th day of January, 2021.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE